IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RSA.No. 664 of 2007()

AS.49/2004 of ADDL.SUB COURT, KOCHI
OS.348/2002 of ADDL.MUNSIFF COURT,KOCHI

.....

APPELLANT/APPELLANT/DEFENDANT :

M.R.GEORGE, S/O.MANGALATH RAPHAEL
VINANI STORES, OCHANTHURUTH.

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENT/RESPONDENT/PLAINTIFF

OCHANTHURUTH SERVICE CO-OPERATIVE
BANK LTD NO.72, OCHANTHURUTH P.O.
KOCHI.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO.664 OF 2007

==========

Dated this the 2nd day of August, 2007

JUDGMENT

Defendant in O.S.348/2002 on the file of Additional Munsiff Court, Kochi is the appellant. Plaintiff is the respondent. Respondent Co-operative Bank instituted a suit seeking a decree for recovery of possession of the plaint schedule shop room which was let out to the appellant on a monthly rent of Rs.399/- on 1.6.2001. It was contended that the Bank requires the building to start an evening counter and inspite of request appellant did not surrender and therefore appellant is to be evicted. Appellant resisted the suit contending that suit is not maintainable as it is filed by the Secretary of the Bank who is not competent to file the suit. It was also contended that the Bank does not require the building and the intention is somehow to evict the appellant. It was further contended that the suit is bad for want

of notice under section 106 of Transfer of Property Act. It was further contended that he is eking his livelihood from the income derived from the business being conducted in the plaint schedule building and so he cannot be evicted. Learned Munsiff on the evidence of PW1, DW1 and Exts.A1 to A6 granted the decree overruling the defence taken by the appellant. Appellant challenged the decree and judgment before Sub Court, Kochi in A.S.49/2004. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

4. Appellant is admittedly not entitled to claim the benefit under the Kerala Buildings (Lease and Rent Control) Act as the building owned by Co-

operative Society is exempted under the Notification issued by the Government under section 25(1) of Kerala Buildings (Lease and Rent Control) Act. The defences were that the Secretary of the Bank is not competent to institute the suit and there is no valid notice as provided under section 106 of the Transfer of Property Act. Courts below relying on Clause 47(13) of Ext.A1 bye-law held that Secretary is competent to institute the suit. Relying on Ext.A3 notice courts below found that there is a valid notice. In the light of that factual findings, appellant is not entitled to challenge the decree concurrently passed by the courts below. As no substantial question of law is involved in the appeal, appeal is dismissed in limine.

5. Learned counsel appearing for appellant then submitted that as the appellant is not having any other building where he could shift the business and as he is eking out his livelihood from the income derived from the business being conducted

in the plaint schedule building, he may be granted six months time to surrender vacant possession of the building. Considering the fact that appellant has been admittedly doing business in the building from 2001 onwards, if the appellant files an affidavit before the executing court unconditionally undertaking to surrender the building on or before 1.12.2007 and to pay the entire arrears of rent delivery of the building is to be adjourned to a date after 1.12.2007. Affidavit is to be filed before the executing court within three days.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006